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P&G Case 8677

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of :
RUSSELL CHARLES DODD : Confirmation No. 3584
Serial No. 09/653,012 : Group Art Unit 3627
Filed September 1, 2000 : Examiner Christopher R. Buchanan
For CUSTOMIZED CUSTOMER PORTAL

APPELLANT'S BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450
Dear Sir,

This is an appeal from the final rejection of pending claims 1-9 and 14 which was made in an Office Action (Paper No. 13) dated December 16, 2003. A timely notice of appeal was filed on March 16, 2004. Appellant's brief is submitted in triplicate.

REAL PARTY IN INTEREST

The appellant named in the caption of this appeal brief has assigned the entire interest in this application to The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to the Appellant, or known to Appellant's legal representative, that will directly affect the Board's decision in the present appeal.

05/14/2004

STATUS OF CLAIMS

Claims 1-9 and 14 are pending and stand rejected. The rejection of Claims 1-9 and 14 is being appealed. A copy of Claims 1-9 and 14 on appeal appears in the attached Appendix.

STATUS OF AMENDMENTS

The Appellant has not filed any amendments subsequent to the Final Action.

SUMMARY OF INVENTION

Appellant's claimed invention (see claim 1 which is representative) relates to a method of providing a customized customer portal.

The method provides an interface to a plurality of customers. (page 7, lines 5-15, Fig. 1). Both the claims and the specification expressly define that customers are purchasers of goods for subsequent sale to consumers. (page 4, line 20 – page 5, line 10). The term "goods" is also expressly defined in the specification and distinguished from services, intangibles, and real property (page 5, lines 19-34).

The method involves receiving customer identification information from at least one of the customers such receipt being through the use of the interface. (page 7, lines 5-15; Fig. 1).

The method also involves receiving from the customer an indication of purchase interest in a consumer product, selected from among a plurality of such products available for sale. The identity of the consumer products is made known through the interface. (page 7, lines 15-30; Fig. 1).

The method involves accessing customer information from a pre-existing database. (page 7, line 5-15; Fig. 1).

The method also involves providing information pertaining to the selected consumer product to the customer. This information is customized on the basis of the customer information previously accessed. Additionally, at least some of the information includes consumer sales projection information calculated with respect to the customer (i.e. a projection of the sales the buyer/user of the system will make to others). (page 8, lines 14-25; page 11, lines 15-33).

ISSUE

Whether Claims 1-9 and 14 are nonobvious under 35 U.S.C. § 103 over Roberts et al. (U.S. Patent 6,101,486) in view of Brockman et al. (U.S. Patent 5,826,240).

GROUPING OF CLAIMS

The ground of rejection of Claims 1-9 and 14 under 35 U.S.C. § 103 over Roberts et al. in view of Brockman et al. is equally applicable to Claims 1-9. Claim 14 is separately patentable. The reasons Claim 14 is separately patentable from Claims 1-9 are discussed in the ARGUMENT section, following.

ARGUMENT

I. The final office action does not make out a proper *prima facie* case of obviousness with respect to Claim 1 based on the combination of Roberts et al. in view of Brockman et al.

In the Final Office Action, the Examiner rejected Claims 1-9 under 35 U.S.C. § 103 as obvious over Roberts et al. (U.S. Patent 6,101,486) in view of Brockman et al. (US 5,826,240). It is well-settled that the examiner bears the initial burden of making and factually supporting any *prima facie* conclusion of obviousness. Three basic criteria must be met to establish such a *prima facie* case. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

- A. Only be glossing over key distinctions between Claim 1 and both the Roberts et al. and Brockman et al. patents can the final action purport to show the motivation to combine and modify the references.**

Claims 1-9 of the present invention are require providing an interface to a plurality of customers. As both the specification and claim 1 expressly recite, a customer in this context is a purchaser of goods for subsequent resale to consumers. The term customer as used in the Roberts et al. patent is not the same as the term customer in claim 1. The cited portion of Roberts et al. discloses nothing about customer sales information, it relates to consumer sales information. In the Amendment transmitted on September 11, 2003, this was made clear by expressly defining in Claim 1 that a customer is a purchaser of goods for subsequent re-sale to consumers. This feature is not present in Roberts et al, and the cited sections of Brockman et al. do not make up for this deficiency. The final action glosses over this distinction between the claimed invention and the prior art by one sentence on Page 2 stating: "Furthermore, it would be obvious to one skilled in the art that the customer purchasing the goods could play a variety of roles (consumer of goods, reseller of good, transporter of goods, etc.)." This summary conclusion, however, is without support in the analysis in the final action or any teaching cited to in the record. Furthermore, the proper analysis for obviousness requires a comparison of the claimed invention as a whole to the prior art as a whole. It is not proper to reduce the combination of prior art references to a series of differences and conclude (without analysis) that the differences themselves would be obvious.

In the instant case the importance of the distinction between claim 1 being directed to purchasers of goods for re-sale, and a patent publication not so directed becomes important when considering the desirability and result of attempting to modify this teaching with those present in Brockman et al. Having assumed away this key difference between Claim 1 and Roberts et al., the final action goes on to look to Brockman et al. for missing teachings. Among the missing teachings for which Brockman et al. is relied upon is the requirement that the method provide information which customer customized information which includes consumer sales projection information calculated with respect to a given customer (Claim 1, element (e)). Column 4, lines 47+ and the abstract lines 15+ are cited in the final action as supposedly

supplying this missing teaching. This reading of Brockman et al., however, is misplaced. The combination here is inappropriate in light of the earlier articulated difference between Claim 1 and Roberts et al.

Firstly, it is noted that Brockman et al. deals with an interface for car dealerships to access databases of past customers, repeat customers, and "hot prospects." This allows car salespersons to know some more background about potential car buyers on the lot. The final action assumes (without reasoning for this conclusion) that this information is the same as the claimed consumer sales projection information required by claim 1. Such is not the case. It is clear that claim 1 is about providing the interface to the customer. Therefore, the customer (i.e. the purchaser of goods for re-sale) is the "user" of the system. The information required by claim 1 is directed to customized information regarding the re-sales of the good (i.e. consumer sales projections calculated with respect to the customer). At best, the system of Brockman et al. merely identifies to its user the who has purchased a car before, and who has been on the lot before – this does not quantify projected sales information of the user of the system (i.e. the customer) in the manner claimed in Claim 1. This difference highlights one of the problems with the failure to acknowledge properly the fact that even the base reference (Roberts et al.) does not address the claimed context of the purchaser of goods for re-sale to others. Because Roberts et al. does not disclose this feature, there is no motivation to look to Roberts in the manner relied upon in the final action. Additionally, the mere grafting of a few sentences from Brockman et al. does not result in a method disclosing all elements of claim 1 as a whole.

The final action on page 4 concludes that "information such as the percentage likelihood of consummating the sale successfully" is sales projection information. While this might be a "sales projection" in the generic sense, this is not the particular type of sales projection information required by claim 1. As noted, the claimed sales projection information is based on information about the buyer (customer) who is selling to others. Brockman et al. at best predicts the likelihood of a single sale based on information about the buyer of the product itself. There is no calculation of any "downstream" element. An example of the difference helps make the point. The present method allows the provider of the interface to provide it to consumers of several types (for example, a drug store and

a grocery store). A particular consumer good might be expected to achieve a different market share in each of these types of stores (or in different regions, climates, etc.). The present method does not concern itself with the likelihood of the customer (who is the "user" of the system in this case) purchasing a given good. The sales projection information is useful to the customer because it gives a projection of his sales to others calculated based upon information about him (e.g. store type, location, product type, etc.).

B. The final action attempts to demonstrate motivation to make the required combination and modifications by mischaracterizing the nature of the problem to be solved.

It is, of course, a requirement for a proper *prima facie* case of obviousness that there be a suggestion or motivation in the prior art to modify or combine references. One possible source of such motivation can arise from the nature of the problem to be solved. *Ruiz v. A.B. Chance Co.*, 357 F.3d 1270, 1275 (Fed. Cir. 2004). The final action, to the extent it attempts to show a motivation to combine and modify the references, appears to rely on the nature of the problem to be solved. However, it does this by mischaracterizing the problem to be solved and making unsupported assumptions about the nature of the claimed invention.

For example, the final action on page 4 states that the inventions of both Roberts and Brockman are directed toward enhancing the sales of products and services to consumers through targeting marketing (Roberts et al.) and through providing customized product information (Brockman et al.). The final action concludes that "modifying the invention of Roberts so that the product information includes sales projection information would be an obvious modification to one skilled in the art that would assist the invention of Roberts in achieving its goal of enhancing product sales." The final action page 3 states the same conclusion is justified by the desire to "help increase customer sales efficiency." Firstly, it is noted that increasing product sales and increasing sales efficiency are not the same concept. In any event, both rationales are directed to a problem of a different nature – providing information to or about the buyer / user to make a sale to the buyer / user. The present invention, by contrast is about providing

information to the buyer / seller about the future sales on the basis of information about the buyer / seller. Ultimately, as noted above in Section I.A., the office action merely dismisses these differences as "obvious" without further analysis.

- II. Even if the obviousness rejection of Claims 1-9 is sustainable, Claim 10 is separately patentable because the final action contains no obviousness analysis with respect to this claim, and the references themselves fail to make out a *prima facie* case of obviousness with respect to this claim.**

Page 2 of the final action notes that Claims 1-9 and 14 are rejection under § 103 as obvious over Roberts et al. in view of Brockman et al.. However, the final action contains no analysis demonstrating how claim 14 is rendered obvious beyond that provided for claim 1. Because the additional features added by claim 14 are nowhere addressed in the final action, the rejection of claim 14 should be reversed on this ground alone. In any event, claim 14 is separately patentable from claim 1. Claim 14 adds the feature that the sales projection information is customized on the basis of planned promotional activities with respect to the selected consumer product. The specification makes clear that such planned promotional activities include such things as direct mailing of samples to target consumers, coupons for the product or the like. The final action cites nothing in either the Roberts et al. nor the Brockman et al. patents containing any mention of such planned promotional activities. The ability of the method of claim 14 to add such a feature also points out the significance of the distinction between the method of the present invention being directed to re-sellers of goods and the disclosure of Roberts et al. and Brockman et al. which deal with direct marketing or selling to ultimate users.

SUMMARY

None of Claims 1-9 and 14 has been properly rejected under 35 U.S.C. § 103 in light of the reasoning and analysis given in the Final Office Action. In light of the analysis and discussion provided above, Appellants respectfully request the Honorable Board of Patent Appeals and Interferences to reverse the rejections of Claims 1-9 and 14 and to remand the application with instructions that these claims be allowed over the cited art.

Respectfully submitted,

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Date: May 14, 2004

Customer No. 27752

APPENDIX – Claims on Appeal

1. A method comprising the steps of:
 - a) providing an interface to a plurality of customers, wherein said customers are purchasers of goods for subsequent sale to consumers,
 - b) receiving customer identification information from at least one of said customers, said receiving being accomplished through the use of said interface,
 - c) receiving from at least one of said customers an indication of purchase interest in at least one consumer product, wherein said at least one consumer product is selected by said at least one of said customers from a plurality of consumer products available for sale, wherein the identity of said plurality of consumer products is made known to said plurality of customers through the use of said interface,
 - d) accessing customer information related to said at least one of said customers from a pre-existing database,
 - e) providing to said at least one of said customers product information regarding said at least one consumer product through the use of said interface, wherein said product information provided is customized on the basis of said customer information accessed in step (d), and wherein at least some of the product information provided comprises consumer sales projection information calculated with respect to said at least one of said customers.
2. The method of Claim 1 wherein said interface is provided on one or more programmable computers.
3. The method of Claim 1 wherein said interface is a graphical user interface.
4. The method of Claim 1 wherein said interface provided via the world wide web.
5. The method of Claim 1 wherein said indication of purchase interest in accomplished through the use of representative icons.

6. The method of Claim 1 wherein said pre-existing database comprises sales information with respect to said plurality of customers.
7. The method of Claim 1 wherein at least steps (d) and (e) are accomplished through the use of a pre-programmed relational database.
8. The method of Claim 1 wherein the product information provided in step (e) is customized on the basis of customer type.
9. The method of Claim 1 wherein the product information provided in step (e) is customized on the basis of customer specific characteristics.
14. The method of Claim 1 wherein said sales projection information is customized on the basis of planned promotional activities with respect to said at least one consumer product.